

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Application No.: 10/695,817  
Attorney Docket No.: Q77969

**REMARKS**

Claims 1-15 are all the claims pending in the application. Claims 1 and 13 are amended.

Claims 1-6 are rejected under 35 U.S.C. § 102(e) in view of U.S. Patent No. 6,772,061 to Berthiaume. Applicant respectfully traverses the rejection at least because Berthiaume does not disclose all the elements of claim 1.

Berthiaume is directed to a system for restricting the performance of a vehicle according to a performance level signal output from a key for the vehicle. The system uses a key that outputs a control signal that indicates one of a plurality of performance levels, such as levels for a beginner up to an expert. See col. 3, lines 25 and 34-41. For example, as shown in Fig. 8, a key 110a sends a control signal S10 to a data port 120a that specifies a performance level at which the vehicle will operate. See col. 6, lines 48-60. Also shown in Fig. 8 is a proximity signal S20 that indicates that the key is attached or is otherwise close to the data port 120a. See col. 6, lines 51- 56. Berthiaume also describes preventing or suspending the operation of the vehicle until the proximity signal S20 is received and forwarded to the data port. See col. 6, lines 60-65. As shown in Fig. 9C, for example, Berthiaume's key 110iv mounts onto a data port 120ai, which itself is mounted onto a vehicle and retained in position by friction. See col. 7, lines 19-26. Berthiaume describes attaching a tether to the key, presumably with the tether also attached to an operator of the vehicle, so as to detach the key from the data port "upon separation of the operator from the vehicle." See col. 7, lines 31-34.

The Examiner asserts that Berthiaume discloses all the limitations of claim 1. For example, the Examiner asserts that Berthiaume's data port 120a corresponds to the "marker

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detector” and the key 110a corresponds to the “qualified person marker” recited in claim 1. The Examiner also asserts that Berthiaume’s control unit 130 corresponds to the control unit recited in claim 1. However, the Examiner appears to ignore the limitation in claim 1 that the qualified person marker is “held by a driver having a driver qualification” for driving a vehicle “only when the qualified person marker is held opposite the marker detector.” Berthiaume’s key can be mounted onto the data port to enable operation of the vehicle without the qualified driving being present. The driver of Berthiaume’s vehicle need not be present to hold the key opposite to the data port for the vehicle to operate since the key can be mounted to the data port, as shown in Fig. 9C for example.

Claim 1 recites detecting a qualified person marker held by a driver having a driving qualification appropriate for driving the vehicle “only when the driver holds the qualified person marker opposite to the marker detector.” Since Berthiaume disclose the key 110a being mounted onto the data port 120a, Berthiaume does not disclose detecting the qualified person marker held by the driver having qualification appropriate for driving the vehicle only when the driver holds the qualified person marker opposite the marker detector. Accordingly, it is respectfully submitted that Berthiaume does not disclose all the limitations of claim 1.

Applicant also submits that Berthiaume does not teach detecting a marker held by a driver having a driving qualification appropriate for driving the vehicle, as recited in claim 1. Berthiaume’s key merely indicates a performance level (i.e., beginner to expert) to restrict vehicle performance (e.g., restrict engine speed or fuel supply rate). See Abstract. However,

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Berthiaume does not indicate whether a driver is qualified to drive the vehicle as required by claim 1.

Claims 2-6 are not anticipated by Berthiaume at least due to their dependency from claim 1. Applicant points out that claim 2 requires that “the measure is a warning for appealing to the sense of sight or the sense of hearing of the driver.” The Examiner takes the position that Berthiaume teaches these limitations at col. 4, lines 57-60 and col. 7, lines 1-11. However, those portions of Berthiaume merely state that “the key may be fabricated having one or more indicators (e.g. an indicator color, an alphabetic and/or numerical label) to indicate the corresponding performance level of the key.” Berthiaume says nothing about a predetermined measure being “a warning for appealing to the sense of sight or the sense of hearing of the driver.” Accordingly, it is respectfully submitted that claim 2 is patentable also for this reason.

Claims 7 - 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Berthiaume in view of U.S. Published Patent Application No. 2005/0140513 to Roed. Applicant respectfully traverses the rejection.

Claim 7 depends from claim 1 and is patentable for at least the reasons discussed above for claim 1, since Roed does not satisfy the deficiencies of Berthiaume with respect to claim 1.

Claims 8 - 12 require “a marker detector provided in a floor of a cab of the vehicle to detect a qualified person marker provided in a shoe worn by a driver having a driving qualification appropriate for driving the vehicle.” Roed is cited for disclosing a marker detector provided in a floor (transponder 6 provided in the floor of area 5) as shown in Figs. 1 and 2.

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Roed is directed to a method for determining if a person is located in an area where tools and machines operate, which might be hazardous. See paragraph [0001]. Roed describes a shop floor in which transponders 6 are provided. A foot transceiver 8 is placed in the sole of a shoe so that when a person walks on the shop floor the transponders 6 located in the area where the person is walking receive a signal from the foot transceiver 8 in the person's shoe. See, for example, Roed paragraph [0023]. Since the position of the transponders 6 on the floor is known, detecting which transponders receive the signal from the foot transceiver 8 indicates the person's location on the floor. Accordingly, if the person enters the working range of a machine, that machine can be stopped to prevent the person from being injured. See paragraph [0028].

The Office Action asserts that it would have been obvious to have modified Berthiaume to use the foot transceiver of Roed for detecting a driver's qualifications to prevent an unqualified operator from driving the vehicle. The alleged motivation for making the modification is "to ensure safety against [an] unauthorized person that [sic, who] is able to enter the vehicle but don't [sic, doesn't] have the qualifications to drive, i.e., they don't have a marker." See Office Action at page 5.

It is respectfully submitted that neither Berthiaume nor Roed, alone or in combination, teach or suggest preventing a person who does not have qualifications to drive a vehicle from entering the vehicle, as asserted in the Office Action. Berthiaume relates to generating a control signal from a key that indicates a performance level at which a vehicle is to be operated, such as at a particular engine speed or fuel supply rate. See Abstract. Berthiaume does not limit operation of the vehicle based on whether a driver is qualified to drive the vehicle. Roed also

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does not teach or suggest this limitation as Roed merely senses the presence of a person in the locale of a machine. Accordingly, the prior art does not teach or suggest the motivation to combine the teachings of Berthiaume and Roed. Rather, the Office Action appears to use the Applicant's teachings as a template, impermissibly, to pick and choose teachings from disparate references to arrive at Applicant's invention.

Applicant also submits that a person of ordinary skill in the art would not have modified Berthiaume's key to use the shoe transponder of Roed. Berthiaume goes to great lengths to show how the key 110 is mounted onto the data port. See Figs. 3A-C, 4, 5, 6A-C, 7A-B, 9A-C, 10A-B. The foot transponder of Roed, however, is not mounted to the transponders in the floor. To do so would defeat the purpose of allowing a person to walk on the shop floor. Likewise, placing the key of Berthiaume in the shoe of a driver would defeat Berthiaume's purpose of constructing the key with "a size and shape to attach securely and detachably to a data port 120i (as shown in Fig. 6A ...)." See col. 4, lines 60-63. Accordingly, modifying Berthiaume's key based on Roed, to place it in a driver's shoe would change the principle of operation of Berthiaume. Accordingly, it would not have been obvious to have combined the references. See MPEP § 2143.01(VI) ("If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).").

Claims 13-15 also are rejected as being obvious over Berthiaume in view of Roed. Claim 13, for example, is directed to a qualified person marker in which the signal from the modulation

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unit identifies the qualified person marker and indicates that a driver of the vehicle is qualified to drive the vehicle. As discussed above, neither Berthiaume nor Roed, alone or in combination, teach or suggest a qualified person marker that indicates that a driver of the vehicle is qualified to drive the vehicle. Accordingly, it is respectfully submitted that the prior art does not render claim 13, or the claims that depend therefrom, unpatentable.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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